IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17858 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALUBHAI D VAGHELA - Petitioner(s)

Versus

SECRETARY, GOVT. OF INDIA & 2 - Respondent(s)

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Appearance :
MR PH PATHAK for Petitioner(s) : 1,
MS VASAVADATTA BHATT, ADD. CENTRAL GOVT. COUNSEL for Respondent(s)
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/09/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the legality of the order dated 22nd April 2003 passed by respondent No.1. By the impugned order, the request of the petitioner to refer his dispute with

respondent Nos.2 and 3 for adjudication to the appropriate Labour Court/Industrial Tribunal came to be rejected on the following grounds:

> "It is reported that the workman was engaged as a substitute on leave resultant vacancy. Moreover, he failed to produce any evidence that he worked for more than 240 days in a calendar."

It is the case of the petitioner that he had worked as a casual labourer with respondent Nos.2 & 3 for more than 240 days before his services came to be terminated without following any procedure and without following the mandatory provisions of the Industrial Disputes Act. The petitioner has contended that his termination was opposed to the provisions of section 25-F, section 25-G and section 25-H of the Industrial Disputes Act and rules 77 and 78 of the Industrial Disputes (Central) Rules.

2. Respondent No.1 refused to refer the dispute on the above mentioned grounds. When the contention of the workman is that his termination was opposed to the provisions of section 25-F, section 25-G and section 25-H of the Industrial Disputes Act, respondent No.1 ought not to have refused to refer such a dispute for adjudication simply on the ground that the workman concerned had failed to produce evidence that he has worked for more

than 240 days in a calendar year. Normally, the question of adjudication of the rights between the parties should be left open for the appropriate Labour Court/Industrial Tribunal and unless it is found that the dispute is frivolous or suffers from gross delay, reference should not be refused. It is by now well settled that the appropriate Government should not adjudicate on the issues arising between the parties while deciding whether an industrial dispute is required to be referred for adjudication or not. In the present case, respondent No.1 erred in refusing to make reference on the grounds that the workman was engaged on leave vacancy and that he failed to produce evidence to show that he had worked for more than 240 days in a calendar year.

3. In the result, while allowing the petition and setting aside the impugned order dated 22.4.2003, respondent No.1 is directed to take a fresh decision regarding referring the dispute raised by the petitioner to the appropriate Labour Court/Industrial Tribunal bearing in mind the observations made in this order. Such decision will be taken expeditiously and not later than three months from the date of receipt of a copy of this order. The petition is accordingly allowed. Rule is

made absolute to the above extent with no order as to costs.

Direct service is permitted.

(Akil Kureshi, J.)

(vjn)